



Interpretive Notice & Formal Opinion (“INFO”) #12:

Agricultural Labor Rights and Responsibilities under Colorado Senate Bill 21-87

Overview

This INFO summarizes agricultural labor rights and responsibilities under [Colorado Senate Bill 21-87](#) (SB21-87, or the “Act”). The Act expanded labor rights and responsibilities in agriculture beyond those already in existing law, such as the [Colorado Wage Act](#), C.R.S. Title 8, Article 4 (wage rights, including payment of earned wages, pay statements, and limits on deductions); the [Colorado Overtime and Minimum Pay Standards \(COMPS\) Order](#) (wage-and-hour rules, including on minimum wage and rest breaks); and the [Healthy Families and Workplaces Act](#) (paid sick leave rights). For more on those and other labor laws, see the Division of Labor Standards and Statistics’s (Division’s) [INFOs and Other Published Guidance page](#). As detailed below: parts of the Act took effect upon its signing on June 25, 2021; others will take effect January 1, 2022; and others will have effective dates on or after January 1, 2022, based on rules that the Act requires to be proposed by fall 2021. This INFO will be updated and re-posted after the conclusion of the rulemaking mandated by the Act.

A. Parts of SB21-87 Effective Immediately (as of June 25, 2021)

1. Paid, Duty-Free, 10- or 15-Minute Rest Periods. Before the Act, the COMPS Order required agricultural employers to provide paid 10-minute breaks (known as rest periods) for each 4 hours of work, or major fractions thereof (*i.e.*, work periods over 2 hours).¹ The Act codifies that requirement, except it eliminates the COMPS Order’s prior flexibility allowing paid rest periods to be shorter or more irregular as long as they *averaged* 10 minutes per four hours worked.² To the extent practical, rest periods should be provided in the middle of each 4-hour work period. Employees must be completely relieved of duty during rest periods, but they do not need to be able to leave the employer’s property. **Workers engaged in hand-thinning and hand-weeding must receive an *additional* 5 minutes of paid rest period time**, making their paid rest period 15 rather than 10 minutes, as detailed below.

<u>Work Hours / Shift Length</u>	<u># Rest Periods Required</u>	<u>Total Length of Rest Periods Required:</u>	
		<u>With Hand-Weeding / -Thinning</u>	<u>Without Hand-Weeding/Thinning</u>
2 or fewer	0	0 minutes	0 minutes
Over 2, up to 6	1	15 minutes (1 rest period)	10 minutes (1 rest period)
Over 6, up to 10	2	30 minutes (over 2 rest periods)	20 minutes (over 2 rest periods)
Over 10, up to 14	3	45 minutes (over 3 rest periods)	30 minutes (over 3 rest periods)
Over 14, up to 18	4	60 minutes (over 4 rest periods)	40 minutes (over 4 rest periods)
Over 18, up to 22	5	75 minutes (over 5 rest periods)	50 minutes (over 5 rest periods)
Over 22	6	90 minutes (over 6 rest periods)	60 minutes (over 6 rest periods)

If any required rest period time is not provided, then the worker’s shift is effectively extended, and they are entitled to additional pay at their agreed-upon or legally-required rate (whichever is higher). See [INFO #4](#).

2. Uninterrupted, Duty-Free Meal Periods. Agricultural employers must provide employees uninterrupted, duty-free meal periods of at least 30 minutes for shifts of over 5 hours. For a meal period to be unpaid, non-work time, workers must be completely relieved of duty, and allowed to leave the worksite and spend time on personal activities. To the extent practical, meal periods must be at least 1 hour after starting, and 1 hour before ending, a shift. If the type of work makes uninterrupted, duty-free meal periods impractical, workers

¹ Until SB21-87, the COMPS Order already required paid 10-minute rest periods (Rule 5.2), but with more flexibility in agriculture: breaks could vary from 10 minutes every 4 hours if they “average, over the workday, at least 10 minutes per 4 hours,” with at least 5 minutes of rest every 4 hours (Rule 2.3.1), but this flexibility did not apply to agricultural employers in the “retail” industry (based on consumer sales) (Rule 2.3.2). For more on COMPS rest periods rules, see [INFO #4](#).

² C.R.S. 8-6-101.5(2)(b); 8-13.5-203(3); also see note 1.

must be allowed to eat meals while working, and must be paid for the full meal period.

Note: The rest and meal break requirements described above do not apply to combine or harvester operators during harvesting, or to truck drivers whose sole and principal duty is to haul livestock.

3. Unions, Collective Bargaining, and Concerted Activity under the Labor Peace Act. Agricultural workers are not covered by the National Labor Relations Act, the federal labor-management relations law that provides union, collective bargaining, and concerted activity rights and responsibilities.³ SB21-87 expands coverage of Colorado’s existing labor-management relations law, the [Labor Peace Act \(LPA\)](#), C.R.S. 8-3-101, *et seq.*, to cover agricultural employees and employers, including with the following rights and responsibilities.

- Employees have the right to organize and join employee organizations (unions); collectively bargain about terms and conditions of employment; and engage in or refrain from lawful concerted workplace activity.
- Workers in the production, harvesting, or processing of farm or dairy products may strike, but only if they file a written “Notice of Intent to Strike” with the Division at least 30 days before engaging in a strike.
- Unfair labor practices (ULPs) by employers or employees are prohibited, including:
 - an employer interfering with union operations, or discouraging or encouraging union membership;
 - employees or employers intimidating or coercing workers who are exercising LPA rights; and
 - employer discrimination or retaliation against workers for engaging in concerted protected activity, filing ULP charges, or participating in other LPA processes (*e.g.*, union elections or investigations of ULPs).⁴

4. Protection Against Retaliation. It is unlawful for agricultural employers to retaliate against certain parties—including agricultural workers, persons with family or workplace relationships with agricultural workers, or persons with whom agricultural workers exchange care or support—for seeking or asserting rights protected under the Act. If an employer takes an adverse action⁵ against a worker within 90 days of a worker’s “protected activity” (for example, filing a complaint, opposing illegality, etc.), there is a rebuttable presumption of retaliatory intent, unless the employer shows its adverse action was in fact taken for a non-retaliatory reason.

5. No Short-Handled Hoes and Tools. Employers cannot require employees to use short-handled hoes (including long-handled hoes modified to have short handles). Weeding or thinning in a stooped, kneeling, or squatting position with another short-handled tool, or by hand, “is strongly disfavored unless there is no suitable long-handled tool or other alternative means of performing the work that is suitable and appropriate.”

6. Gloves and Knee Pads. Agricultural employers must provide protective gloves and knee pads without charge as needed for employees performing hand-weeding, hand-thinning, or hand-hot-capping work.

7. Reasonable Visitor Access. Agricultural employers are required to provide workers with reasonable access to visitors at employer-provided housing. An employer may require visitors to follow general safety or health rules, as long as other third parties are also required to follow such rules.

8. Reasonable Access to Key Service Providers. Agricultural workers must be allowed access to medical service providers at any time, and be allowed access to other key service providers at times when and where they are not performing work, including on rest periods and meal breaks. “Key service providers” include:

- health care and medical service providers, including community health providers and promotoras;
- education providers;
- attorneys and other legal advocates;
- government officials, including consular representatives;
- members of the clergy; and

³ 29 U.S.C. 152(3).

⁴ For more information on Colorado state labor relations law, visit the Division’s [Labor Relations page](#).

⁵ An “adverse action” is an employment decision that negatively affects employment terms or conditions, including, but not limited to, termination, pay cut, denial of promotion, demotion, or reassignment to lesser rank/duty. C.R.S. 8-2-206(1)(a).

- any other service provider to whom an agricultural worker may need access.

9. Employer-Provided Transportation to Services. If an employer provides housing and transportation to employees, it must provide transportation at least weekly to a location where employees can: (1) access basic necessities, like food, medical supplies, or clothing; (2) meet with key service providers (see above); and (3) conduct financial transactions (e.g., a bank or other place to cash paychecks). Employers must provide this transportation to range workers (defined in “Coverage and Definitions” below) at least once every three weeks. Agricultural employees must have reasonable access to their own means of transportation, and if they have a vehicle parked on employer property, an employer need not provide transportation as described above.

10. No Employer Interference with Access to Housing. Employers cannot interfere with a person’s access to or from an agricultural worker’s residence, including with barriers, physical force, violence, or threats.

11. Notice of Rights. Agricultural employers must notify workers of the following rights and responsibilities:⁶

- the requirements that employers provide —
 - an additional 5-minute, paid rest period for hand-weeding and hand-thinning work,
 - gloves and knee pads as needed for certain work,
 - transportation for employees living on-site,
 - reasonable access to visitors and key service providers, and
 - *(in 2022 after rules take effect, see Section (D)(2))* protection from heat-related stress illness and injury;
- that employers may not interfere with access to employee residences;
- that short-handled hoe use, including the use of a modified, long-handled hoe, is prohibited;
- the restrictions on hand-weeding and hand-thinning work; and
- the right to file claims of violations of the above-described rights.

Employers must provide notice by posting information in one or more conspicuous (obvious) places at the worksite, including in employer-provided housing and in any places where labor law or other informational notices are posted. If the employer typically communicates with workers electronically, such as by email or on an electronic platform, it also must distribute notice by those electronic means. An employer can comply with this notice requirement by posting and providing [this INFO](#) or another poster/notice with the required content. This INFO is available [on the Division’s website](#), which will have a Spanish translation by September of 2021. Updated compliant posting/notice content also will be available after the Division finishes required rulemaking.

B. Parts of SB21-87 Effective Immediately If a Public Health Emergency Is in Effect (as of June 25, 2021)

1. Public Health Emergency (PHE) Protections. In agriculture, the Act expands the requirements of the Public Health Emergency Whistleblower Law ([PHEW](#)), which protects individuals who report health violations, wear personal protective equipment, and engage in other protected acts related to a state or local PHE. As of this INFO’s publication, a COVID-related PHE is in effect. For more details about PHEW, see [INFO #5](#).

2. Additional Living Space. During a PHE, agricultural employers that provide employees with housing must ensure that this housing meets the following minimum square footage requirements as to each employee:

- single-occupancy housing — at least 80 square feet of combined sleeping and living quarters;
- multiple-occupancy housing — at least 100 square feet of sleeping quarters *and* at least 120 square feet in areas used for “combined purposes,” such as eating and preparing meals;
- all housing — screened windows open to the outdoors, or an air filtration system; and
- range employees (see “Coverage and Definitions” below) — a single occupancy mobile housing unit, regardless of variances under [20 CFR 655.235](#).

3. CDPHE inspection access. Agricultural employers must allow the [Colorado Department of Public Health and Environment](#) access to inspect and ensure compliance with PHE guidelines and orders.

⁶ The rights the notice must cover are in C.R.S. Article 13.5, Title 8, Part 2, §§ 201-204; see Sections (A)(5)-(10) above.

4. Public Health Emergency Safety Training, and Required Notice/Posters. During a PHE, agricultural employers must provide both training and materials about federal and state PHE-related safety guidance, protections, and precautions. The materials must include “posters and pamphlets written in English and Spanish and any other relevant languages,” as well as “contact information for the migrant farm worker division of Colorado Legal Services, or its successor organization, where a worker may receive free and confidential legal services.” Additionally, the materials must be posted at the worksite, in employer-provided housing, and in any other places where labor law or other information is typically posted.⁷

C. Parts of SB21-87 Effective January 1, 2022

1. Minimum Wage for All. The small agricultural employer exemption from the Colorado minimum wage requirement ends after 2021: As of 2022, all agricultural employers must pay all agricultural workers the Colorado minimum wage.⁸ The minimum pay rate is different for workers principally engaged in the production of livestock on the range (see “Coverage and Definitions” below): “range workers” must be paid at least \$515.00 per week. Each year after 2022, the minimum wage and range worker salary will be inflation-adjusted.

2. Limited Types of hand-weeding and hand-thinning Allowed. As of January 1, 2022, hand-weeding and hand-thinning work is allowed in only limited situations:

- stooped, squatting, or kneeling hand-weeding that takes up 20% or less of the worker’s weekly work time and is “incidental to a non-hand-weeding operation”;
- hand-weeding or -thinning of high density plants that are spaced less than 2 inches apart;
- hand-weeding or -thinning of a commodity for which the employer has a certification showing that the commodity meets the United States Department of Agriculture’s National Organic Program;
- hand-weeding, -thinning, or -tending of seedlings or commodities in tubs or planters of up to 15” openings;
- seeding, planting, transplanting, or harvesting by hand or with a hand tool;
- hand-weeding, -thinning, or -tending the soil-exposed area surrounding commodities that are grown using polyethylene film or plastic mulch (but *not* spaces between rows of plants); or
- if an employer obtains a variance certificate through the Colorado Department of Agriculture (CDA). See Section (D)(4) below, about the CDA’s rulemaking related to hand-weeding and -thinning variances.

D. Parts of SB21-87 Effective After Adoption of Rules (with effective dates no earlier than January 1, 2022)

The following SB21-87 requirements will take effect after the finalization of rules that the Act requires to be adopted by agency (Division) rulemaking. Since late July 2021, the Division has been soliciting written comments from the public, and beginning in August 2021, it is holding open public meetings for interested stakeholders before issuing proposed rules. The Division will begin issuing proposed rules by September 30, 2021, followed by further solicitation of public comments, and open public hearings, before adopting final rules by late 2021. For more details on the rulemaking schedule, and information about how to submit comments or participate in any open meetings or hearings, visit the Division’s [agricultural rulemaking webpage](#).⁹

1. Overtime Premium Pay. SB21-87 requires that the Division “shall promulgate rules providing meaningful overtime and maximum hours protections to agricultural employees ... adopted no later than January 31, 2022,” based on considerations the Act mandates, including “the inequity” in agricultural employees’ prior exclusion from overtime rights, “the fundamental right of all employees” to overtime, and the “unique difficulties agricultural employees have obtaining workplace conditions equal to those provided to other employees.”

2. Heat Safety. SB21-87 requires the Division to “promulgate rules that require agricultural employers to protect agricultural workers from heat-related stress illnesses and injuries” when the outdoor temperature is at

⁷ While this INFO can serve as the notice of “Part 2” rights detailed above (see sections (A)(5)-(10) above), it lacks the information on the “public health emergency” notice, and thus cannot serve as *this* additional notice that the Act requires.

⁸ COMPS #37, 7 CCR 1103-1, Rule 2.3; C.R.S. 8-6-101.5(1)(a).

⁹ The Division’s agricultural rulemaking page, cdle.colorado.gov/agricultural-labor-rights-and-responsibilities, is reachable by clicking on “Agricultural Labor Rights and Responsibilities” on Division’s homepage, www.ColoradoLaborLaw.gov.

least 80 degrees. The Act requires these heat precautions to conform to guidelines published in 2016 by the Centers for Disease Control and Prevention (CDC) and the National Institute for Occupational Safety and Health (NIOSH).¹⁰ The CDC has since published best practices for occupational heat safety, including:

- additional rest periods, or modified tasks or schedules, for time to cool down and recover during shifts;
- monitoring workers for, and training them to recognize, signs of heat illness or injury;¹¹ and
- ensuring workers have access to adequate shade and drinking water, and first aid/health care if needed.¹²

One of the most important safety measures available for hot-weather work is ensuring that employees take adequate, regular rest breaks to cool down in the shade. Rest periods *already* are mandatory, as detailed above. Without awaiting new rulemaking, the Division views the failure to provide rest breaks as an investigative and enforcement priority (not just in agriculture), when one or more of the following are present:

- work that is physically taxing, or is performed in exposure to extreme heat or cold;
- worker vulnerability based on factors such as language barriers, low wages, etc.; or
- workers lack ready access to drinking water, shade, bathrooms, or other health and safety protections.

3. Additional Service Provider Access Provisions. SB21-87 requires the Division to issue rules regarding additional times during which employers may not interfere with agricultural workers' "reasonable access to key service providers," supplementing the reasonable service provider access requirement described above.

4. Limited Allowances and Certificates of Variance for Hand-Weeding and Hand-Thinning. SB21-87 requires the Colorado Department of Agriculture (CDA) to issue rules on the following topics:

- "allowances for and limitations to hand-weeding and hand-thinning for agricultural employers actively engaged in the transition to certified organic agriculture"; and
- a process by which an agricultural employer can "seek a certificate of variance [from the CDA] [...] that allows for more than occasional or intermittent hand-weeding" (*i.e.*, for hand-weeding that exceeds 20% of the worker's weekly work time), where the employer shows that (1) the work does not risk injury to workers or involve unnecessary stooping, kneeling, or squatting; and (2) there is no alternative or existing exemption suitable and appropriate to the employer's production and operation size.¹³

E. Coverage and Definitions

1. "Agricultural Workers" and "Agricultural Employers." The Act covers "agricultural workers" and "agricultural employees," defined as all persons employed by "agricultural employers" who perform "farming services or activities."¹⁴ An "agricultural employer" is defined as an employer, of any size or revenue, engaged in "farming services or activities" that either (1) directly and regularly hires one or more employees itself, or (2) contracts with another person who recruits, solicits, hires, employs, provides, or transports employees to perform work on its behalf — for example, a farm that contracts with a staffing company or labor broker, which recruits and hires workers to perform "farming services or activities." "Farming services or activities" include:

- cultivating and tilling soil;
- producing, cultivating, growing, or harvesting agricultural or horticultural commodities, or ginning cotton;
- raising, shearing, feeding, caring for, training, or managing livestock, bees, fur-bearing animals, or poultry;

¹⁰ C.R.S. 8-13.5-203(1) (*citing* [CDC/NIOSH Publication No. 2016-106](#)) ("2016 Revised Publication: *Criteria for a Recommended Standard, Occupational Exposure to Heat and Hot Environments*").

¹¹ Such signs and symptoms include: increased core temperature and heart rate; clammy, hot, blistered, sweaty, or pink/red skin; muscle cramps, spasms, or convulsions; nausea or vomiting; dizziness or staggering; decreased level of consciousness, fainting, disorientation, irrational behavior, or confusion; fatigue; headache; and dehydration. See *id.* (cited in C.R.S. 8-13.5-203(1)); CDC, "[Warning Signs and Symptoms of Heat Illness](#)" (2021).

¹² See note 11 above, as well as the following CDC/NIOSH resources:

- publication #2010-114, [Fast Facts: Protecting Yourself from Heat Illness](#); and
- poster/handout, [Protect Your Workers From Heat Stress](#).

¹³ See the [CDA's website](#) for more information about this rulemaking process and SB21-87.

¹⁴ C.R.S. 8-2-206(1)(b); 8-6-101.5(3); 8-13.5-201(3) (defining "agricultural employee" and "agricultural worker").

- preparing or delivering agricultural commodities for market, or delivering them to storage or market;
- operating or maintaining ditches, canals, reservoirs, or waterways that supply or store water for farming;
- managing, conserving, improving, or maintaining a farm and its tools and equipment; and
- handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market agricultural or horticultural commodities.¹⁵

2. “Range Workers.” Parts of the Act apply differently to “range workers ... principally engaged in the range production of livestock ... on the open range” — terms the Act defines with the following federal definitions:

- “range production” includes herding, handling, transporting, feeding, watering, caring for, branding, tagging, protecting, or otherwise helping to raise livestock, and related duties (for example, fence repair);
- “livestock” include cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on the farm, but not turkeys or domesticated fowl; and
- “open range” means uncultivated land with natural forage (herbaceous food) for livestock or wild game.¹⁶

3. Other Protected Parties. In addition to protecting the rights of agricultural employees, parts of the Act protect the rights of (1) individuals with family or workplace relationships with those employees, (2) individuals with whom those employees exchange care or support, (3) whistleblowers providing information about potential violations of the law, and (4) key service providers to whom employees may need access.

F. Remedies for Violations

Agricultural employees may file claims for wage-and-hour violations (denial of wages, breaks, etc.) with the Division or directly in court. For more on Division wage claim processes and available remedies, see [INFO #2](#).

Agricultural employees and others protected parties (defined above) may file claims as to some of the Act’s non-wage-and-hour provisions (including retaliation, equipment, weeding, and service provider/visitor access violations) that seek orders requiring an employer to follow or cease violating the law, money damages (for actual loss or \$10,000, whichever is greater),¹⁷ and attorney fees.¹⁸ These claims also may be [filed with the Division](#) or directly in court. Unlike laws requiring Division investigation of *all* unpaid wage claims, the Act does not require Division investigation of all non-wage-and-hour claims. The Division will review such complaints and consider whether to investigate them fully, in light of Division resources and workload. The Division will notify parties whether it decides to investigate fully or not; if it does not, its notice authorizes the complainant to pursue the claim in court.

G. For Additional Information

Visit the Division’s [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

Additional resources on occupational heat-related illness and injury prevention:

- Centers for Disease Control and Prevention (CDC): [Heat-Related Illnesses](#) and [Recommendations](#)
- National Institute for Occupational Safety and Health (NIOSH):
 - [Heat Stress Page](#)
 - Fact Sheet, “[Protecting Workers from Heat Illness](#)”
- Occupational Safety and Health Administration: [Water. Rest. Shade.: Keeping Workers Safe In The Heat](#)
 - Fact Sheet, “[Prevent Heat Illness at Work](#)” (in [Spanish](#); low-literacy versions in [English](#) and [Spanish](#))
 - Fact Sheet, “[Protecting Workers From The Effects of Heat](#)”
 - Heat Safety Posters: [English](#) and [Spanish](#)
 - Training: “[Heat Illness Training Guide: A Lesson Plan for Employers](#)”

¹⁵ C.R.S. 8-2-206(1)(c) (incorporating C.R.S. 8-3-104(1); [29 USC 203\(f\)](#); [26 USC 3121\(g\)](#)).

¹⁶ C.R.S. 8-6-101.5 (incorporating federal definitions in [29 CFR 780.323](#) to [29 CFR 780.329](#)).

¹⁷ Damages won by service providers or whistleblowers will be distributed to affected workers. C.R.S. 8-13.5-204(1),(2).

¹⁸ These remedies are available for retaliation and violations of Part 2 rights, as described in Sections (A)(5)-(10) above.